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The trial court instructed the jury that:  
"The owner of a ship is under a duty to the stevedoring company to exercise ordinary care in the selection of men employees to exercise their duties on a ship in a reasonably safe manner, to give them proper instructions, to warn them of any concealed or latent defects, and to give them proper instructions, and not by the negligence of the employees or discoverable by the exercise of ordinary care."

The shipowner had requested the jury to give the instruction on open and obvious defects. The court refused to give the instruction of the view that the instruction was not the subject matter of the open and obvious defect. The shipowner's requested charge was refused (495). Thus the jury was instructed to warn of concealed defects. The converse is seemingly indicated. There can be no duty to warn if the defect is open and obvious. Thus open and obvious defects. In the case, the jury was instructed on the issue was argued in closing.

It is incorrect to state that the court's instruction was an "open and obvious" instruction.

that the time has come for definitive Supreme Court consideration of what is now a morass of conflicting lower court concepts of shipowner/longshoreman negligence standards, a situation lacking uniformity which permits the irreconcilable decisions of *Samuels* and *Cox* to arise in different Circuits.

With regard to the third Question Presented by the Petitioner, whether a warning to a supervisor employee or knowledge of the supervisor employee is sufficient to constitute warning to the individual employee, respondent contends that the issue was not raised below.

One need only read the appellate opinion to understand that the issue of knowledge/warning of the individual longshoreman was of significance to the Fifth Circuit. The Court stated "There was evidence that the stevedore foreman and one or more of the other longshoremen knew of the hole; but there was evidence that the plaintiff himself did not know of it, and it had never been called to *his* attention." (App. 4a) (emphasis added). Notice to the supervisory employees was uncontradicted in the evidence.

Respondent looks to the briefs in the Fifth Circuit and says that no issue was asserted. Not mentioned is